

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Joseph Bishop

Application No.: 10/824,148

Filed: April 14, 2004

For: **LOADING SUPPORT STRUCTURE**
FOR PATIENT TRANSPORT CART



Group Art Unit: 3673

Examiner: FREDRICK C. CONLEY

Confirmation No.: 6376

PRE-APPEAL BRIEF CONFERENCE REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Pre-Appeal Brief Conference is requested to review the above-identified application. No amendments are being filed with this request. For at least the following reasons, it is believed that the outstanding rejections are clearly improper and without basis.

Overview

Claims 1-20 are pending in this application, with Claim 1, 14, 15 and 18 being independent. Claims 1-8, 12, 15-17 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,662,388, hereinafter referred to as *Friel*. Claims 9-11, 13 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Friel* in view of U.S. Patent No. 2,127,309, hereinafter referred to as *Richard*.

Rejections of Claims 1-8, 12, 15-17 and 19

The rejection of Claim 1-8, 12, 15-17 and 19 is improper because the Examiner has incorrectly interpreted means plus function claim language to be “intended use” language and applied incorrect standards of patentability to reject the claims.

Claim 1 recites in part “an attaching means for attaching the main body assembly to a member of the patient cart proximate to the rear portion of the patient cart.”

According to MPEP § 2181(I), “[a] claim limitation invokes 35 U.S.C. § 112, sixth paragraph if it meets the following 3-prong analysis: (A) the claim limitations use the phrase “means for” or “step for;” (B) the “means for” or “step for” is modified by functional language; and (C) the phrase “means for” or “step for” is not modified by sufficient structure, material or acts for achieving the specified function.”

With regard to (A), Claim 1 recites “means for”. With regard to (B), the “means for” language in Claim 1 is modified by functional language “attaching the main body to a member of a patient transport.” With regard to (C), the language “means for” is not modified by structure, but only by the word “attaching”, which is a description of an action. Therefore, the language at issue in Claim 1 is means plus function language and invokes the standards of 35 U.S.C. § 112, sixth paragraph.

According to the MPEP § 2181(II), “a claim limitation expressed in means-plus-function language “shall be construed to cover the corresponding structure...described in the specification and equivalents thereof.””

In the specification, drawings and descriptions of a patient transport cart are provided that differ significantly from any disclosure in *Friel*. For example, paragraph [0002] of the present application recites “[p]atient transport carts, also called carts, are typically used for providing transport for a patient from a point of injury, e.g., an accident scene, to an ambulance and again from the ambulance to a hospital bed.” Notice how a patient transport cart is differentiated from a hospital bed. Further, paragraph [0022] recites “FIGs. 1A and 1B illustrate a conventional patient transport cart according to the prior art.” Clearly, Figure 1A in the present application shows a cart with a bed and wheels for transporting patients.

Friel discloses a patient lifting device to impart a vertical and corresponding horizontal force component upon a load. The patient adjusting device 1 has a lifting

mechanism 9 that is supported on the floor by wheels 2 and has a boom 20 on its top side 7. The patient adjusting device is positioned at the rear of the patient's bed and a connecting element 35 extends from the boom 20 to a sheet 13 on which the patient rests. The boom 20 is raised and tension is applied to the connecting elements 35, thereby pulling the sheet 13 and repositioning the patient toward the rear of the bed.

In setting forth the rejection of Claim 1, the Examiner cites *Friel*. The Examiner takes the position that *Friel* discloses each and every feature of Claim 1 because the recitation in Claim 1 that "an attaching means for attaching the main body assembly to a member of the patient transport cart approximate to the rear portion of the patient transport cart" is merely intended use language and that the device disclosed in *Friel* is capable of performing that intended use. The Examiner states on page 2, lines 21-24 that "a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim."

The Examiner's statement with regard to intended use language is not applicable to the means plus function language recited in Claim 1, which invokes different standards. The correct burden on the Examiner is not to show that the cited art could perform the intended use. Rather, he must cite a reference that shows each and every feature recited in Claim 1, namely that the reference performs the identical function specified in the claims, and does so with the corresponding structure described in the specification, or equivalents thereof (See MPEP 2182). Therefore, the Examiner has applied incorrect standards for evaluating the patentability of Claim 1 and the rejection must be withdrawn.

Also, even if the correct standard is applied, Claim 1 is still allowable. First, the device of *Friel* does not perform the identical function recited in the claims, namely "attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart." Second, the device in *Friel* is not, and is not an equivalent to, a patient transport cart. Therefore, *Friel* does not disclose an attaching means for attaching a main body assembly to a member of

a patient transport cart proximate to the rear portion of the patient transport cart, as recited in Claim 1 and described in the specification. For at least that reason too, the rejection of Claim 1 must be withdrawn.

Claim 15 recites means plus function language similar to the language in Claim 1, and must be allowed for similar reasons as discussed above in connection with similar language in Claim 1.

The rejection of Claim 15 must also be withdrawn because Claim 15 positively recites the feature “a patient transport cart” and the Examiner has not shown where or how that feature is disclosed in *Friel*.

Claim 15 positively recites a patient transport cart. Claim 15 recites in part “[a] patient transport cart having a support structure for supporting a rear portion of the patient transport cart” and “an attaching means for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart.”

The rejection of Claim 15 must be withdrawn at least because *Friel* does not disclose or suggest a patient transport cart. Rather, *Friel* only discloses a hospital bed, which is not a patient transport cart. Further, in setting forth the rejection of Claim 15, the Examiner does not even attempt to explain where or how *Friel* discloses or suggests a patient transport cart, as recited in Claim 15. Therefore, a proper rejection under 35 U.S.C. § 102(b) has not been set forth at least because *Friel* does not disclose a patient transport cart and the Examiner has not shown where or how each and every claimed feature is disclosed in *Friel*. For at least those reasons, the rejection of Claim 15 must be withdrawn.

Rejections of Dependent Claims

The rejections of Claims 2-3, 16, 17, 19 and 20 must be withdrawn at least because they depend from allowable independent claims.

Conclusion

For the reasons stated above, it is requested that all the rejections be withdrawn and that this application be allowed in a timely manner.

Respectfully submitted,

BUCHANAN INGERSOLL PC

(INCLUDING ATTORNEYS FROM BURNS, DOANE, SWECKER & MATHIS)

Date: April 18, 2006

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